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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re BONNIE D., a Person Coming Under  
the Juvenile Court Law.

SOLANO COUNTY DEPARTMENT OF  
HEALTH & SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MARILYN D.,

Defendant and Appellant.

A133733

(Solano County  
Super. Ct. No. J40907)

Marilyn D. (mother) appeals the juvenile court's order following a contested jurisdictional hearing. (Welf. & Inst. Code, § 300.)<sup>1</sup> In its order, the court adjudged mother's 13-year-old daughter Bonnie a dependent child of the court upon finding that Bonnie was at substantial risk of being sexually abused by her father, and that mother failed to protect Bonnie from the danger of sexual abuse. (§ 300, subds. (b), (d).) The court found that the father had molested Bonnie's older sister, Michelle, when the girl was aged 13 to 15 and mother failed to protect Michelle and Bonnie after Michelle told mother about the molestation. We conclude that substantial evidence supports the court's findings and shall affirm the order.

<sup>1</sup> All further section references are to this code.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

In late May 2011, 21-year-old Michelle told a probation officer that her father molested her when she was between 13 and 15 years old. The probation officer referred the matter to the sheriff's office. In June 2011, a deputy sheriff interviewed Michelle, who reported years of sexual abuse by her father, including intercourse. Michelle said the molestation led to her depression, suicide attempts, and bad behavior. The deputy then interviewed Michelle's 13-year-old sister, Bonnie, who said she knew about Michelle's claims but that she herself had not been touched inappropriately by their father. The deputy arrested father for crimes against Michelle and interviewed him. According to the police report, father denied having intercourse with Michelle but admitted giving both daughters rubs to "comfort" them. Father said he would rub the girls' "shoulders, breasts, stomach, hips, thighs and vagina" and sometimes became aroused when doing so.<sup>2</sup>

The deputy contacted the Solano County Department of Health and Social Services (county) to place Bonnie in protective custody. A county social worker responded and interviewed mother. Mother "began the interview by informing [the social] worker that . . . Michelle is a liar." The social worker said action had to be taken to protect Bonnie from possible abuse, given Michelle's accusation, and mother "again stated she did not believe the abuse happened and that father needed to come home and be part of the family." The social worker "discussed different ways in which the mother could demonstrate her ability to protect Bonnie, such as the father leaving the home, mother and child leaving the home or the mother allowing Bonnie to stay with other family members. [Mother] stated that none of the options were okay because Bonnie is very close with her father and would be upset if she could not be around him." The county took Bonnie into protective custody and placed her in temporary foster care. The county later reported: "Following the father's arrest and the child being placed into protective custody, [mother] received a phone call from [father] in jail. After the phone

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<sup>2</sup> The police interviews with father and Michelle were videotaped and reviewed by the juvenile court.

call with the father, [mother] called Michelle and instructed her to come home because they have to go to the Bail Bondsmen in order to get [father] out of jail.” Father was released from custody on bail.

In June 2011, the county filed a petition to adjudge Bonnie a dependent child of the court. (§ 300.) As subsequently amended, the petition alleges that father sexually abused Bonnie’s older sister, Michelle, “when Michelle was approximately the same age as Bonnie is now. The sexual abuse consisted of but was not limited to fondling of Michelle’s breasts, legs and vagina, and of penetrating of her vagina.” (§ 300, subd. (d).) The petition further alleges that mother “knew or should have known” that Bonnie “was at substantial risk of being molested” by father “who had molested Bonnie’s older sister Michelle . . . when Michelle was approximately the same age as Bonnie . . . is now” but “failed to protect” Bonnie. (§ 300, subds. (b), (d).)

A contested jurisdictional hearing was held in August and September 2011. At the time, father was awaiting a preliminary hearing in the criminal case. In advance of the dependency hearing, the county filed a report recounting an interview with mother in which mother gave ambivalent statements about her position on Michelle’s allegations of sexual abuse. Mother said she “has to believe” Michelle and does believe her but also said “all of this is unfair because all of the statements were Michelle’s and none of the statements were from Bonnie.” Mother characterized Michelle’s accusation of sexual abuse as “complaining” and Michelle’s “opinion.” During the interview, mother at first denied receiving any complaints of sexual abuse from Michelle but then admitted that Michelle had told mother about the sexual abuse years earlier. When the social worker asked mother if her daughters would benefit from counseling, mother said she “does not think Bonnie needs counseling and that Michelle is 21, she can do whatever she wants.”

The social worker’s assessment was that “mother does not have the capacity to protect Bonnie at this time. These concerns are based on the mother’s continued struggle with the allegations made by her first daughter Michelle. In addition, although the father admitted to inappropriately touching both daughters, the mother cannot believe her daughter Michelle. Furthermore, when the mother was questioned how she would protect

Bonnie if there was no longer a [dependency] case, the mother responded she would move in with her husband . . . and would make sure that other people were always around Bonnie.” The social worker concluded that “the mother overall lacks education about sexual abuse as well as predator behavior” and opined that “[t]he risk to this child remains very high.”

In its jurisdictional order, the court determined that the county failed to prove that father “actually molested Bonnie.” The court thought father’s police statement about his contact with the “girls” ambiguous and insufficient to overcome Bonnie’s denial of abuse. However, the court did find that father “molested Michelle a number of times when she was approximately 13 years old to 15 years old.” The molestation “included massages, touching of the vaginal area, intercourse and masturbation.” Mother “was told of the molests of Michelle in 2008.” Mother “thought Michelle lied and denigrated her character. She did nothing to keep [father] from being alone with Bonnie and took no “measures to protect Michelle or Bonnie from molest.” The court concluded that the county “has shown by a preponderance of the evidence that there is a substantial risk that Bonnie will be sexually abused by [father]. Bonnie is the same gender as Michelle. [Bonnie] is about the same age as Michelle when [father] began molesting her. [Father] molested Michelle for years and in very serious ways. Bonnie appears especially vulnerable to her father[] taking advantage of her. She wants to be reunited with him and seems unlikely to be able to protect herself.” The court also concluded that the county “has shown by a preponderance of the evidence” that mother has failed to adequately protect Bonnie and that there “is a substantial risk that [mother] will continue to fail to protect Bonnie.” The court sustained allegations that Bonnie was at substantial risk of sexual abuse and that mother failed to protect Bonnie from that danger. (§ 300, subds. (b), (d).)

At a dispositional hearing in November 2011, Bonnie was placed with mother who had moved out of the family home and was living in rented rooms. Father remained in the family home and mother visited the home to cook and wash laundry. The court ordered family maintenance services for mother and reunification services for father. The status

of the criminal charges filed against father is not clear, although there is mention in the record that a hearing in the criminal case was set for November 29, 2011, and father's attorney said the criminal protective order preventing contact between father and Bonnie might be lifted at that time.

Mother and father filed separate notices of appeal. Father's appointed counsel filed a brief informing this court that counsel found no arguable issues to raise on appeal. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 846.) We gave father an opportunity to state issues for review and he did not state any. We dismissed the appeal as to father and now proceed to a consideration of mother's appeal.<sup>3</sup>

## DISCUSSION

Mother contends there is insufficient evidence to support the juvenile court's jurisdictional findings that there is a substantial risk that Bonnie will suffer serious physical harm as a result of mother's failure to adequately protect Bonnie from being molested by father (§ 300, subd. (b)) and that mother failed to adequately protect Bonnie from sexual abuse when mother knew or reasonably should have known that Bonnie was in danger of sexual abuse (§ 300, subd. (d)).

"On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

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<sup>3</sup> The county contends that mother's appeal does not raise a justiciable issue and should be dismissed because the jurisdictional finding concerning father is unchallenged so Bonnie would remain a dependent child even if mother prevails on appeal. There is some merit to the contention. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1495.) However, the jurisdictional findings as to mother may impact custody or the type of family services provided in this case; we therefore exercise our discretion to reach the merits of the appeal.

The evidence here fully supports the juvenile court's findings. "Sexual abuse of one's siblings can support a trial court's determination that there is substantial risk to the remaining siblings." (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 197.) "[W]here, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. . . . [A]berrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior." (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1347.)

Mother argues that any risk to Bonnie was substantially reduced by the time of the jurisdictional hearing because there was a criminal protective order barring father from contact with Bonnie. The protective order did not eliminate the substantial risk to Bonnie. At the time of the jurisdictional hearing, father was free on bail and had continued close contact with mother. Also, the protective order was temporary and would be lifted if the charges against father were dismissed. *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806 is instructive. In that case, the court rejected the argument that a father convicted and incarcerated for molesting his children no longer posed a threat to them. The court acknowledged that, at the time of the jurisdictional hearing, the incarcerated father had no *immediate* access to the children "[b]ut father had not yet been sentenced on his sexual molestation convictions, and he still had the right to appeal those convictions. [¶] If father's convictions were reversed, there is a possibility that father would be released from custody, and there is every reason to believe that father would resume his sexual abuse of [the children] without the state intervening to prevent him from obtaining access to them."

Mother also argues that there was no substantial risk of harm to Bonnie by the time of the jurisdictional hearing because mother had made "substantial progress" in acknowledging the sexual abuse that occurred in her home and preventing its recurrence. Mother did make some progress. But the evidence supports the social worker's conclusion, accepted by the juvenile court, that "the mother overall lacks education about sexual abuse as well as predator behavior" and that "[t]he risk to this child remains very high." Mother knew that father admitted to the police that he repeatedly fondled

Michelle's breasts and genitals but mother remained ambivalent when asked if she believed that father sexually abused Michelle. In an interview with a social worker, mother said she believes Michelle (because she "has to") but also dismissed Michelle's accusations of sexual abuse as "opinions" and indicated that she does "not believe everything Michelle says." Mother also insisted that father is "a good guy" who would give her and Bonnie "everything that they wanted." Mother said she does "feel upset at her husband" but maintains a close relationship with him, seeing him often and doing household chores for him even while living apart. The juvenile court reasonably found that mother was not capable of protecting Bonnie from father.

As a final matter, mother argues that the section 300, subdivision (d) finding was misapplied here because the section applies exclusively to abusers and those who have failed to prevent abuse of the dependent child, not one who fails to protect a child from the risk of future abuse. The argument is based on the language of section 300, subdivision (d), which provides that a child may be adjudged a dependent child of the court when "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined [in the Penal Code] by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse." Mother argues that the latter part of the statute concerning failure to protect applies only if the child is actually abused, and that there was no finding here that Bonnie was abused by father.

Preliminarily, we note that "[s]ection 300 contemplates that jurisdiction may be based on any single subdivision" (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 330) and thus "an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence." (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) The section 300, subdivision (b) finding that mother's conduct places Bonnie at risk of serious physical harm is enough to support jurisdiction regardless of the court's additional section 300,

subdivision (d) finding concerning sexual abuse. Nevertheless, we address the issue to avoid any confusion concerning the reach of section 300, subdivision (d).

The challenged provision applies to a parent or guardian who “has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.” The plain language of the provision encompasses the situation presented here, where mother failed to protect Bonnie from sexual abuse but no actual abuse was demonstrated. It is not true, as mother argues, that a parent can be said to have failed to protect a child from sexual abuse only if the child suffers abuse. A failure to protect also occurs where there is a substantial risk of sexual abuse, known or reasonably knowable to the parent, and the parent does nothing. The provision refers to the child being “in danger of sexual abuse” and does not, by its terms, limit its scope to only those children who are abused.

The finding that mother failed to protect her child from sexual abuse was not meant to “taint” mother “with the stigma of a sexual abuser,” as she suggests, but to identify problems in the family and to address those problems with appropriate educational and support services. The juvenile court’s orders achieved that goal here, returning the child to mother while providing for family maintenance and reunification services to foster a greater awareness of the danger of sexual abuse.



## DISPOSITION

The order is affirmed.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.